

**House Resolution**

**No. 20**

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**Introduced by Assembly Member Lieu**

August 28, 2007

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House Resolution No. 20—Relative to Check Sellers, Bill Payers, and Proraters.

- 1 WHEREAS, As California’s investment and financing authority,  
2 the Department of Corporations administers and enforces the Check  
3 Sellers, Bill Payers and Proraters Law (the “Proraters Law”); and  
4 WHEREAS, The Proraters Law sets forth licensing and financial  
5 requirements, contract and fee limitations, prohibitions against  
6 unlawful and fraudulent practices, and other consumer protections;  
7 and  
8 WHEREAS, Enacted more than 60 years ago, the Proraters Law  
9 makes it unlawful to engage in various services, including  
10 prorating, without a license from the Department of Corporations,  
11 or unless an exemption from licensing is available; and  
12 WHEREAS, Prorating involves the business of receiving money  
13 from consumers and paying their creditors in exchange for  
14 compensation, and these services can play an important part in  
15 helping financially distressed consumers; and  
16 WHEREAS, Only three proraters are currently licensed under  
17 the Proraters Law, numerous exemptions from licensing have been  
18 added to this law over the years, and there is a lack of licensing  
19 revenue to support a more comprehensive regulatory program  
20 under this law; and  
21 WHEREAS, Over 50 nonprofit community service organizations  
22 are claiming exemptions from licensing under the Proraters Law  
23 at this time and are therefore operating without a license; and

1 WHEREAS, Experience has shown that both for-profit and  
2 nonprofit businesses, including credit counselors, may arrange or  
3 provide prorating services through debt management plans and  
4 debt settlement plans, without supervision and oversight; and

5 WHEREAS, Debts are paid for a consumer on a periodic basis  
6 in a typical debt management arrangement, and the consumer's  
7 debts are paid in one lump sum in a typical debt settlement  
8 arrangement, exposing consumers to misrepresentation,  
9 mismanagement, and misappropriation of funds; and

10 WHEREAS, In the past five years, the credit counseling, debt  
11 management, and debt settlement industries have been subject to  
12 more intense scrutiny and oversight due to abuses in the  
13 marketplace; and

14 WHEREAS, Several actions have been taken by regulators and  
15 public-policy makers at the state and federal levels to help curb  
16 fraudulent and unlawful activities of unscrupulous operators; and

17 WHEREAS, The Department of Corporations assisted the  
18 Assembly in drafting Assembly Bill 2293 of the 2001–02 Regular  
19 Session (Chapter 779 of the Statutes of 2002) to modernize and  
20 enforce standards of accountability for certain nonprofit credit  
21 counselors claiming exemptions from licensing under the Proraters  
22 Law; and

23 WHEREAS, Assembly Bill 403 of the 2003-04 Regular Session  
24 (Chapter 360 of the Statutes of 2004) made further adjustments to  
25 fees, regulations, and consumer protections that are applicable to  
26 these exempt credit counseling organizations under the Proraters  
27 Law; and

28 WHEREAS, Assembly Bill 535 of the 2005–06 Regular  
29 Session, which would have established a licensing program for  
30 nonprofit credit advisers and managers, was vetoed by the  
31 Governor in 2005, based on significant fiscal, policy, and program  
32 concerns; and

33 WHEREAS, The Department of Corporations has taken notable  
34 enforcement action against unlicensed and unlawful operators over  
35 the past few years, including actions with other regulators such as  
36 the Federal Trade Commission, to help protect distressed debtors;  
37 and

38 WHEREAS, The federal Bankruptcy Abuse Prevention and  
39 Consumer Protection Act has required debtors for the past two

1 years to undergo counseling from nonprofit counseling agencies  
2 approved by the United States Trustee; and

3 WHEREAS, The Internal Revenue Service continues to revoke  
4 the tax-exempt status of credit counselors that use their nonprofit  
5 status to lure consumers into unsuitable debt payment programs;  
6 and

7 WHEREAS, Congress has held hearings and published reports  
8 criticizing the abuses in the credit counseling industry and  
9 recommending greater oversight; and

10 WHEREAS, The National Conference of Commissioners on  
11 Uniform State Laws adopted the Uniform Debt-Management  
12 Services Act of 2005 (the Uniform Act), with regulations including,  
13 among other things, registration, bonding, disclosure, and penalties  
14 for noncompliance; and

15 WHEREAS, As shown by the comments to the Uniform Act,  
16 this model law applies not only to debt management services, but  
17 also to debt settlement services and credit counseling services,  
18 even if they do not have control over the consumer's money; now,  
19 therefore, be it

20 *Resolved by the Assembly of the State of California*, That a task  
21 force is hereby established consisting of the members of the  
22 Assembly Banking and Finance Committee or their designees,  
23 with technical assistance to be provided to the task force by the  
24 Commissioner of Corporations, or his designee; and be it further

25 *Resolved*, That the task force shall conduct a study and make  
26 recommendations to the Legislature by February 1, 2008, on  
27 whether and how the Proraters Law should be revised; and be it  
28 further

29 *Resolved*, That in conducting this study and making  
30 recommendations, the task force shall obtain input from interested  
31 stakeholders including consumer groups, industry groups, and  
32 regulatory agencies, and the task force shall take into consideration  
33 the burdens and benefits to impacted parties, including, but not  
34 limited to, any economic, legal, and fiscal impacts; and be it further

35 *Resolved*, That in conducting this study and making  
36 recommendations, the task force shall consider existing California  
37 law and programs, the laws and programs administered by other  
38 state or federal agencies, the Uniform Act and other model acts,  
39 regulatory actions and funding mechanisms, published reports,

- 1 and other information that the task force deems appropriate; and
- 2 be it further
- 3 *Resolved*, That the Chief Clerk of the Assembly transmit a copy
- 4 of this resolution to the Commissioner of Corporations.

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